

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

ORDER

07-CR-6028L

v.

JEFFREY T. SWARTZ,

Defendant.

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The Government has filed a motion (Dkt. #92) requesting that the Court reconsider its decision of August 5, 2009 allowing the defendant to withdraw his previously entered guilty plea to Count 2 of the indictment. The Court has set a schedule for defendant to respond.


The Government requests reconsideration but also requests, in the alternative, an *in limine* order limiting the defendant's ability to reference at trial the destruction of the defendant's hard drive by the FBI.

At this juncture, the parties should focus on the motion to reconsider. If the case does proceed to trial, the Court will consider the Government's *in limine* request as part of the ordinary pre-trial proceedings. Defendant may withhold his comments on this issue until that time.

Issues relating to loss or spoliation of evidence occasionally arise in criminal cases and resolution of those issues is best reserved for trial.

Concerning the *in limine* motion, however, I am confident that I will need an affidavit from the agent involved as to the circumstances relating to the destruction of the evidence. I would also expect to be supplied with any Department of Justice policy or protocol that exists for the FBI's retention and/or destruction of evidence in a criminal case.

IT IS SO ORDERED.



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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
August 12, 2009.